IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL REVISION APPLICATION No 210 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE D.C.SRIVASTAVA sd/-

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : YES

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STATE OF GUJARAT

Versus

AMITKUMAR MAHENDRAPRASAD PANDYA

Appearance:

1. Criminal Revision Application No. 210 of 2000

Mr.HH PATEL, A.P.P. for Petitioner No. 1

MR DC DAVE for Respondent No. 1

CORAM : MR.JUSTICE D.C.SRIVASTAVA

Date of decision: 13/07/2001

ORAL JUDGEMENT

1. The order of 2nd Joint Civil Judge (J.D.), Anand, passed on 10.2.2000 is under challenge in this Revision. Under the impugned order the learned Magistrate has discharged the accused - respondent under Sections 245(2)

& 258 Cr.P.C.

2. A complaint was filed by Factory Inspector, Nadiad on 18.4.1990 complaining that the respondent accused has committed an offence punishable u/s. 85 of the Factories Act. No doubt the case was pending since 1990 and the impugned order was passed in February, 2000, yet it has to be examined whether the impugned order is legal and in accordance with law. In the impugned order shelter has been taken by the learned Magistrate behind the Apex Court's verdict in Rajdev Sharma v/s. State of Bihar and Common Cause v/s. Union of India and accordingly the accused respondent was discharged under the aforesaid sections. The impugned order shows that the complainant was present after being served bailable warrant of arrest, still he refused to give evidence in support of the complaint. The learned Magistrate was concerned with the enxiety of the accused that he had to come again and again for the fault of the prosecution. It is also indicated in the order that the Factory Inspector, complainant who was present, refused to give his statement in support of the complaint and no witness was present. As such it was a case for discharge.

3. The impugned order is totally contrary to law. Firstly the order of discharge has been passed u/s.245(2) of the Code of Criminal Procedure. Section 245(2) of the Cr.P.C. privides that nothing in this section shall be deemed to prevent a Magistrate from discharging the accused at any previous stage of the case if, for reasons to be recorded by such Magistrate, he considers the charge to be groundless. This section applies to a case where the prosecution evidence has been recorded u/s. 244 of the Cr.P.C. While taking action u/s. 245(2) of the Cr.P.C. the learned Magistrate is required to record reasons why he considers the charge to be groundless and if he considers the charge to be groundless by giving reasons he can discharge the accused at any previous stage. In the impugned order it is no where mentioned that the Magistrate considered the charge to be groundless nor any reason has been given that the charge was groundless. Consequently the order of discharge u/s.245(2) of the Cr.P.C. is totally illegal and unwarranted.

4. The second grouand for discharging the accused is taken by the Magistrate u/s.258 of the Cr.P.C. Here also compliance of Section 258 was not found made. This section provides that in in any summons case instituted otherwise than upon complaint, a Magistrate of the first class, or, with the previous sanction of the Chief

Judicial Magistrate, any other Judicial Magistrate, may, for reasons to be recorded by him, stop the proceedings at any stage without pronouncing any judgment and where such stoppage of proceedings is made after the evidence of the principal witnesses has been recorded, pronounce a judgment of acquittal and, in any other case, release the accused, and such release shall have the effect of discharge. These situations did not arise in the case before me. It was not a summons case instituted otherwise than upon a complaint. On the other hand it was a case instituted on a complaint filed by the Factory Inspector, Nadiad. Consequently apparently Section 258 of the Cr.P.C. is not attracted. As such the impugned order is illegal and contrary to law.

5. So far as the observation of the learned Magistrate that the complainant was present and he refused to give his statement in support of his complaint is concerned, it is controverted by an Affidavit of the Factory Inspector Shri D.A.Patel wherein he has deposed that summons was not served on him so also bailable warrant of arrest. He had gone to the Court on 10.2.2000 after attending other cases in other Courts and then he was apprised that this case was listed for hearing. If what is deposed in the affidavit is correct it reflects that the Judicial records were not properly maintained by the learned Magistrate and all the observations made by him are contrary to record. The complainant Shri D.A.Patel has deposed that on 10.2.2000 he appeared before the learned Magistrate and tried to move two applications, one for adjournment and the other for cancellation of bailable warrant, but the learned Magistrate refused to accept these applications and scolded him like anything and passed the impugned order. There was no justification for the Magistrate to refuse to entertain the applications. In all fairness he should have entertained the applications and if he was of the opinion that the applications were without merit he could have rejected the same. He could have also rejected adjournment applications taking shelter behind the Apex Court's verdict in Rajdev Sharma's and Common Cause cases, but that was not done. Refusal to entertain the applications moved by the complainant is hardly warranted by law. This conduct of the learned Magistrate is not to be appreciated. In these facts and circumstances of the case the impugned order can neither be sustained in law nor u/s.245(2) and 258 of the Cr.P.C. nor on facts nor on the strength of the Apex Court's verdict in Rajedev Sharma's and Common Cause cases.

6. The Revision, therefore, succeeds and is hereby

allowed. The impugned order is set aside. The case is remanded to the learned Magistrate, namely, 2nd Joint Civil Judge (J.D.), Anand, with direction that he shall decide the complaint in accordance with law within a period of 4 months from the date of receipt of certified copy of the order. Time bound direction is given keeping in view the fact that the complaint is very old i.e. of 18.4.1990. It is further hoped that the prosecution shall not seek unnecessary adjournment and cooperate with the trial Court for expeditious disposal of the case.

sd/-

Date : July 13, 2001 (D. C. Srivastava, J.)

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